

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KENNETH A. BECKWITH,

Plaintiff,

v.

BANK OF AMERICA,

Defendant.

CASE NO. C10-5220BHS

ORDER GRANTING  
DEFENDANT'S MOTION  
TO DISMISS

This matter comes before the Court on Defendant Bank of America's ("BofA") motion to dismiss pursuant to Rules 12(b)(5) and (6) (Dkt. 10) and Plaintiff Kenneth A. Beckwith's ("Beckwith") motion for extension of time to exhaust administrative remedies (Dkt. 12). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants BofA's motion to dismiss (Dkt. 10) and denies Beckwith's motion for extension of time (Dkt. 12) for the reasons discussed herein.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

This matter arises out of a challenge made by Beckwith regarding his loan agreement with BofA. *See, e.g.*, Dkt. 1 (Complaint) ¶¶ 42, 44. Beckwith is proceeding *pro*

1 se in this matter. On May 6, 2010, BofA filed a motion to dismiss Beckwith's claims  
2 pursuant to Fed. R. Civ. P. 12(b)(5), (6). Dkt. 10. Initially, Beckwith did not respond. The  
3 Court put Beckwith on notice that he must respond or will likely face dismissal without  
4 prejudice. Dkt. 13.

5 On July 15, 2010, Beckwith filed his response pursuant to the notice given. Dkt.  
6 14. This response contained several documents with the word "amended" included in the  
7 title. *See, e.g., id.*, Attachment 1 (e.g., *amended* petition, complaint) (emphasis added). On  
8 July 19, 2010, BofA replied. Dkt. 15.

## 9 II. DISCUSSION

### 10 A. Motion to Dismiss Under 12(b)(5)

11 BofA is no longer pursuing its claim of insufficient service. *See* Dkt. 15 at 4  
12 (acknowledging that Beckwith cured the previously insufficient service). Therefore, this  
13 issue is no longer before the Court.

### 14 B. BofA's Motion to Dismiss Under 12(b)(6)

15 Fed. R. Civ. P. 12(b) motions to dismiss may be based on either the lack of a  
16 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal  
17 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Material  
18 allegations are taken as admitted and the complaint is construed in a plaintiff's favor.  
19 *Keniston v. Roberts*, 717 F.2d 1295 (9th Cir. 1983). "While a complaint attacked by a  
20 Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's  
21 obligation to provide the grounds of his entitlement to relief requires more than labels and  
22 conclusions, and a formulaic recitation of the elements of a cause of action  
23 will not do." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (internal  
24 citations omitted). "Factual allegations must be enough to raise a right to relief above the  
25 speculative level, on the assumption that all the allegations in the complaint are true (even  
26 if doubtful in fact)." *Id.* at 1965. As the Court informed Beckwith in its notice (Dkt. 13),  
27  
28

1 he must allege “enough facts to state a claim to relief that is plausible on its face.” *See id.*  
2 at 1974.

3 BofA first argues that Beckwith’s response was not timely served upon BofA and  
4 should, therefore, be disregarded. Dkt. 15 at 2. The Court declines to disregard  
5 Beckwith’s pro se materials based on BofA’s untimeliness argument.

6 BofA next argues that Beckwith’s amended complaint does not cure the  
7 deficiencies noted previously by the court. *Id.* The Court agrees. It appears from the  
8 Court’s review of Beckwith’s complaint (petition for declaratory judgment and injunctive  
9 relief, Dkt. 14, Attachmetn 1) that he simply added the word “amended” but made no  
10 material changes, if any.

11 In opposition, Beckwith relies on a document entitled “Nice Offer and Demands.”  
12 Dkt. 14, Attachment 3. He argues that BofA’s failure to respond to this document  
13 constitutes their admission to his allegations. *See* Dkt. 14 at 2. It does not. This document  
14 provides no assistance to Beckwith in surviving the instant motion to dismiss. The  
15 complaint remains deficient as previously discussed in the Court’s notice to Beckwith  
16 (Dkt. 13). Therefore, the Court grants BofA’s motion to dismiss.

### 18 **C. Beckwith’s Motion to Extend**

19 On June 30, 2010, Beckwith moved the Court to extend deadlines in order for him  
20 to exhaust administrative remedies. Dkt. 12. This motion presumes that the instant motion  
21 to dismiss would be denied. Because the Court grants the instant motion to dismiss,  
22 Beckwith’s motion for extension is denied as moot.

**III. ORDER**

Therefore, it is hereby **ORDERED** that Beckwith's case is **DISMISSED** without prejudice under Fed. R. Civ. P. 12(b)(6) (failure to state a claim). Beckwith's motion for extension of time is **DENIED** as moot.

DATED this 9<sup>th</sup> day of August, 2010.



BENJAMIN H. SETTLE  
United States District Judge